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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).No.25 OF 2004

Commissioner of Income Tax-1
Chennai. .. Appellant

Vs.

M/s.Ashok Layland Ltd
Chennai .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 2.5.2003 made in ITA No.236/Mds/1994 for the assessment year 1986-87 against the order of the Commissioner of Income Tax, [Appeals] VII, Madras dated 20.9.89 in ITA.No.36/89-90/Spl.R.II against the Order of the Deputy Commissioner of Income Tax, Special Range, Madras 30.3.1989.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel (IT)
For Respondent : Mr.R.Venkatnarayanan
for M/s.Subbaraya Ayar

J U D G M E N T
(Delivered by P.D. DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 2.5.2003 made in ITA No.236/Mds/1994 for the assessment year 1986-87, and is admitted on the following questions of law:

"i. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the excise and customs duty component had to be excluded from the value of closing stock? And

ii. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the customs and excise duty paid during the year while the manufactured goods were at stock is allowable in full?

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2. The Revenue is the appellant. The Assessing Officer included the customs and excise duty component in the value of the closing stock. Even though the assessee claimed allowance of customs and excise duty paid during the year while the manufactured goods were at stock, the assessing officer disallowed the same. Hence, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who dismissed the appeal and confirmed the order of the Assessing Officer.

3. On further appeal by the assessee, the Tribunal, allowed the same following the order of the Special Bench of the Tribunal in ITO v. Foods Specialities Ltd., [1994] 49 ITD 21 wherein it was held that no part of the duty which is related to the goods that remained unsold at the close of the year should be added to the charge of the closing stock. Being exasperated, the Revenue has preferred this appeal raising the substantial questions of law referred to above.

4. It is fairly conceded by the learned Senior Standing Counsel for the appellant that the first issue raised in this appeal is covered by the decision of this Court in Commissioner of Income-tax Vs. Dynavision Ltd., [2004] 267 ITR 600, and the second issue is covered by the decision of the Apex Court in Berger Paints India Ltd. Vs. Commissioner of Income-tax [2004] 266 ITR 99.

5. In COMMISSIONER OF INCOME-TAX v. DYNAVISION LTD. [(2004) 267 I.T.R. 600], this Court, observing that the inclusion of excise duty in the valuation of closing stock is permissible only if the liability for that amount in the excise duty account was given as a deduction and thus, the excise duty liability is not to be included in the valuation of closing stock, held the issue against the Revenue and in favour of the assessee.

6. In Berger Paints India Ltd. Vs. Commissioner of Income-tax [2004] 266 ITR 99, the Apex Court held that the entire amount of excise duty/customs duty paid by the assessee in a particular accounting year is allowable under section 43B of the Income-tax Act, 1961, as a deduction in respect of that year, irrespective of the amount of excise duty/customs duty included in the valuation of the assessee’s closing stock at the end of the accounting year as relating thereto.

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In view of the ratio laid down in the decisions referred supra, the questions of law raised for our consideration are answered in favour of the assessee and against the Revenue, and the appeal is dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "A", Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals)-VII, Madras

4.The Deputy Commissioner of
Income Tax, Special Range-II
Madras.

+ 1 CC To M/s.Pushya Sitaraman, Advocate SR NO.11549

T.C.(A).No.25 OF 2004

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